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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/655,440	09/04/2003	Aaron Markworth	SPINE 3.0-395 CONT	6452
530	7590	10/10/2006	EXAMINER	
LERNER, DAVID, LITTENBERG, KRUMHOLZ & MENTLIK 600 SOUTH AVENUE WEST WESTFIELD, NJ 07090			HOFFMAN, MARY C	
			ART UNIT	PAPER NUMBER
			3733	

DATE MAILED: 10/10/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

NI

Office Action Summary	Application No.	Applicant(s)	
	10/655,440	MARKWORTH ET AL.	
	Examiner	Art Unit	
	Mary Hoffman	3733	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 September 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 18-23 is/are allowed.
- 6) ☒ Claim(s) 1,2,6-9 and 13-17 is/are rejected.
- 7) ☒ Claim(s) 3-5 and 10-12 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 04 September 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>12/17/2003,09/04/2003</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

The examiner would like to notify Applicant's representative that the paper file of the parent case, 10/124170, was not available at the time that this office action was written. It would be appreciated if Applicant could provide a copy of the affidavit that had been previously submitted in the parent case 10/124170, in particular the date to which the affidavit is sworn behind, in the next response.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-2, 6-9, and 13-17 are rejected under 35 U.S.C. 102(b) as being anticipated by Eaton et al. (U.S. Patent No. 5,871,504).

Eaton et al. disclose a system for use in spinal stabilization, comprising an **anchoring member** (ref. #26) comprising a **bone-engaging portion** (ref. # 26f) and a **head** (see portion around ref. #26c) the head comprising a **recess** (ref. #26c) and an **external surface**; a **rod** (ref. #34); and a **rod persuader** (ref. #30) comprising a **body** (ref. #30) with a **first end** (ref. #46) and a **second end** (ref. #36) the second end being releasably attached to the anchoring member, a **pusher member** (ref. #45) at the second end capable of urging the rod into the recess of the anchoring member, a **pistol**

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grip (ref. #46) attached to the body, and a **trigger** (ref. #48) coupling the pusher member to the body and capable of urging the pusher member toward the anchoring member. While it is noted that the trigger draws inwardly the tubular member, ref. #34, when the trigger is pulled (col. 8, lines 34-36), the device of Eaton et al. is capable of performing the functional language as currently claimed. Claim 1 recites "a trigger coupling the pusher member to the body and capable of urging the pusher member toward the anchoring member", and this functional language can be met by a person holding the device by the trigger, ref. #48, and moving the entire device toward the anchoring member before the anchoring member (ref. #26) and the rod (ref. #34) are connected to each other via threading 34a and recess 26c. The pusher member of the rod persuader comprises a **slide** (ref. #43) slidingly coupled to the body via the trigger, a **sleeve** (ref. #32) attached to the slide and partially surrounding the second end, and at least **one pusher bar** (ref. #36) integral with the sleeve and defining a **recess** (bore extending through ref. #36) for accommodating the rod upon contact therewith. The rod persuader further comprises a **passageway** (central bore of ref. #36 and 36a) extending from the first end of the body to the second end of the body. The body has a **top-sided channel** (central bore of ref. #36), the pusher member adjacent to the body has a **lower channel** (central bore of ref. #36a), and the top-sided channel and the lower channel cooperatively form the passageway. The system for use in spinal stabilization further comprises a **ratchet** adapted to control translation of the pusher member along the body, and configured to progressively lock to prevent the pusher member from translating away from the rod. The ratchet of the rod persuader comprises

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interacting male (ref. #52) and **female teeth** (ref. #54). The ratchet is located between the pistol grip and the trigger. The ratchet is located between the body and the pusher member.

Allowable Subject Matter

Claims 18-23 are allowed.

Claims 3-5 and 10-12 objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Please see attached PTO-892.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mary Hoffman whose telephone number is 571-272-5566. The examiner can normally be reached on Monday-Friday 9:00-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo C. Robert can be reached on 571-272-4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

MCH



EDUARDO C. ROBERT
SENIOR ADVISORY PATENT EXAMINER